GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16611 of Kenneth Workman, Josef Straka, and Carl and Elizabeth Richmond, pursuant to 11 DCMR 3104 and Section 206 for a special exception to expand and establish a private school and Section 411 for relief from the roof structure requirements to allow for the construction of more than one roof structure, a waiver from the roof structure setback requirements and roof structures with walls of an unequal height in an R-5-D District at premises 2969 Upton Street N.W. and 4101 and 4103 Connecticut Avenue, N.W. (Square 2243, Lots 27, 28, and 65).

HEARING DATES: May 15, May 22, and July 10, 2001

DECISION DATES: September 4 and September 25, 2001

DECISION AND ORDER

The applicant is Edmund Burke School ("Burke School"), on behalf of the owners of the subject property, located at 2969 Upton Street, N.W. and 4101-4103 Connecticut Avenue, N.W. (Square 2243, Lots 27, 28, and 65). Burke School filed an application pursuant to 11 DCMR § 3104 with the Board of Zoning Adjustment on July 7, 2000 for a special exception under 11 DCMR § 206 for an addition to an existing private school in an R-5-D zone district. Burke School sought special exception authorization to construct an additional school building next to its existing building and to increase enrollment capacity to 360 students and 70 staff. Burke School also sought relief under 11 DCMR § 411 to allow more than one roof structure housing mechanical equipment. The zoning relief requested in this application is self-certified pursuant to 11 DCMR § 3113.2. After public hearing, the Board denied the application because the proposed private school expansion was likely to become objectionable to adjoining and nearby property because of traffic impacts associated with the proposed increase in the number of students and staff.

Preliminary and Procedural Matters

Notice of Application and Notice of Public Hearing. By memoranda dated August 16, 2000, the Office of Zoning advised the Office of Planning, the Zoning Administrator, and Advisory Neighborhood Commission (ANC) 3F, the ANC for the area within which the subject property is located, of the application.

The Board originally scheduled a public hearing on the application for October 24, 2000. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on September 14, 2000 mailed the applicant, the owners of property within 200 feet of the subject property, and ANC 3F notice of

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the hearing. Notice was also published in the D.C. Register. The applicant's affidavits of posting and maintenance indicate that zoning posters were posted beginning October 6, 2000 in front of the subject property in plain view of the public.

The hearing was postponed several times, until November 14, 2000, January 23, 2001, and May 15, 2001, to provide additional time for discussions between Burke School, ANC 3F, and interested neighbors to address concerns about traffic on Upton and Van Ness Streets and the public alley, the amount of parking provided by Burke School, and the preservation of green space between the existing school building and its eastern property line. The applicant submitted modified plans for the expansion that, among other things, addressed traffic circulation and parking.

Requests for Party Status. The Board granted timely requests for party status to (1) Neighbors United for Livable Streets ("NULS"), a coalition of residents of Upton and Tilden Streets, N.W. and Connecticut Avenue in the vicinity of Burke School; (2) Linda M. Jay, a resident of Upton Street in a house immediately east of the existing Burke School building; and (3) Sirrus LLC, the owner of a 37-unit apartment building located at 4107 Connecticut Avenue, N.W., immediately adjacent to the site of the proposed expansion.

Van Ness South Tenants' Association ("VNSTA"), an organization representing residents of the 625-unit apartment building at 3003 Van Ness Street, N.W., submitted a late application for party status. The Board also granted party status to VNSTA, because it represented residents who rely on the alley system also used by Burke School and are affected by the use of Van Ness Street for bus parking and other traffic associated with the school.

Applicant's Case. The applicant provided testimony and evidence from David Shapiro, Head of School; Steve Pruitt, Vice Chairman of the school's Board of Trustees and parent of a Burke School student; Frank Schlesinger, an expert in architecture; Louis Slade and Erwin Andres, experts on transportation, traffic, and parking matters; and Lisa Myers, a Metropolitan Police Department officer who also works part-time directing traffic at Burke School during the morning and afternoon rush hours.

Office of Planning Report. The Office of Planning ("OP") report noted that the location of the subject property is a logical area for expansion of Burke School that would place the new building on a major thoroughfare, away from residential properties. OP identified the major issue, among the adverse impact criteria enumerated in 11 DCMR § 206, as the impact of the proposed expansion on traffic and the applicant's ability to mitigate that impact. OP relied on the transportation personnel of the Department of Public Works ("DPW") for analysis of the traffic issue. OP recommended denial of the application in light of DPW's conclusion that continued traffic congestion would result under the applicant's proposed traffic plan.

DPW Report. By report dated May 3, 2001, the Department of Public Works ("DPW"), Office of Transportation Planning, stated that the existing Burke School currently generates traffic congestion and presents traffic safety problems. DPW concluded that the proposed expansion would increase the existing traffic problems and would cause local residents to continue to experience traffic congestion, although the applicant's proposed mitigation measures

would improve traffic congestion and safety over existing conditions. Accordingly, DPW recommended against approval of the application to expand the school to the adjacent property, with associated increases in the student and faculty populations. In a subsequent supplemental report, dated May 21, 2001, DPW reviewed the applicant's revised traffic management plan and recommended a one-year demonstration of the effectiveness of the proposed mitigation measures before approval of the application.

ANC Report. At a duly noticed public meeting held April 23, 2001, with a quorum present, ANC 3F passed a resolution to oppose the application. The ANC's written report, dated May 8, 2001, recommended denial of the application and identified the following specific issues and concerns:

1) Traffic – Burke School is located in a densely populated residential neighborhood, which houses several institutions in addition to Burke School that generate very heavy traffic and parking demands on Upton, Van Ness, Tilden, and 29th Streets and Connecticut Avenue. Approval of the application would produce unacceptable and intolerable increases in already high traffic volumes in the neighborhood surrounding Burke School.

2) Recreation Space – Burke School provides no on-site space for outdoor student recreation activities or on-site food service facilities for student lunches. An increase in Burke School's authorized student level would exacerbate existing disruptive activities and would be objectionable.

3) Compliance – Burke School has failed to comply with conditions of prior Board orders.

At a duly noticed public meeting held June 18, 2001, with a quorum present, ANC 3F passed a resolution to support DPW's recommendation for a one-year demonstration of the effectiveness of Burke School's proposed traffic management plan.

Parties in Opposition. NULS opposed the application due to concerns that the proposed addition would exacerbate existing traffic problems. Joe Mehra, an expert traffic consultant retained by NULS, testified that the applicant's traffic report was inaccurate and understated actual traffic volumes in the vicinity of Burke School. NULS contended that existing conditions in the area are unsafe and congested, and would be made worse by any additional traffic on the roadways adjacent to Burke School.

Sirrus opposed the application on grounds that the proposed addition would adversely affect residents of the adjacent apartment building by increasing noise, traffic, and parking problems. VNSTA also testified that approval of the application would worsen traffic conditions.

Persons in Support or in Opposition. The Board received numerous letters and heard testimony from many persons interested in the application. Persons in support generally described the many attributes of Burke School and its need for additional space and facilities. Persons in opposition generally described problems associated with traffic congestion on small

residential streets and narrow alleys, and with increased parking demand associated with Burke School and other educational facilities in the vicinity.

Closing of the Record. The record was closed at the conclusion of the hearing on July 10, 2001, with the exception of certain information requested by the Board and the parties' proposed findings of fact and conclusions, which were due on August 20, 2001. The record was reopened on September 4, 2001 to receive certain post-hearing submissions by the parties, which were due by September 18, 2001.

Decision Meeting. At its decision meeting on September 25, 2001, the Board, by a 4-0-1 vote, denied the application.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. Burke School, a private, coeducational school for grades six through twelve, was established in 1968 and has been located since 1973 in its existing building at 2955 Upton Street, N.W. (Square 2243, Lot 67).

2. The proposed addition would be located on adjacent property to the west at 2969 Upton Street, N.W. and 4101-4103 Connecticut Avenue, N.W. (Square 2243, Lots 27, 28, and 65). The subject property, an irregularly shaped parcel with an area of 14,305 square feet, is separated from Burke School's existing building by a public alley.

3. The subject property is zoned R-5-D, which permits matter-of-right development to a height of 90 feet, 3.5 floor area ratio, and 75 percent lot occupancy, with rear yards of at least 15 feet. 11 DCMR §§ 400.1, 402.4, 403.2, 404.1.

4. The site of the existing school is zoned R-2, as is the neighborhood to the east of Burke School. The southern side of Upton Street to 29th Street is developed with rowhouses. Along the north side of Upton Street, heading east, are six semi-detached dwellings, the Levine School of Music, Howard University Law School, and several large detached residential houses.

5. Areas to the north and west of Burke School are zoned R-5-D and contain medium to high-density residential developments consisting of rowhouses and apartment buildings of varying heights and bulk. The block of Van Ness Street behind Burke School is developed with high-density residential apartment buildings. On the west side of Connecticut Avenue, across from the subject property, are the Van Ness Campus of the University of the District of Columbia and the Intelsat office building. North of the site at Connecticut Avenue and Van Ness Street is a C-3-A zone district of mixed-use development.

The Proposed Private School Use

6. The applicant proposes to construct a new five-story school building for middle school students. The Burke School expansion, at 28,167 square feet, would contain classrooms, a library, computer rooms, photography labs, music rooms, art studios, administrative space, a 150-seat auditorium, and outdoor terrace space for passive recreation.

7. The proposed expansion would comply with the building restrictions of the R-5-D zone with respect to height, floor area ratio, rear yard, and lot occupancy requirements.

8. The core school hours would be 8:25 a.m. to 3:30 p.m., with after-school programs operating until 6:30 p.m. The applicant stated that trash would be collected in the new building and serviced by a private contractor between 8 a.m. and 6 p.m.

Noise Impacts

9. The proposed expansion of Burke School would not create adverse noise impact on neighboring property as a result of the increase in student population.[1] The private school use of the property would involve older children in grades six through twelve, and would occur principally indoors in an urban setting. The proposed addition would be oriented toward Connecticut Avenue, away from the residential area.

Traffic Impacts

10. Connecticut Avenue is a major arterial, but other streets in the vicinity of Burke School, including Upton, Tilden, and Van Ness Streets, are much smaller and residential in nature. The neighborhood does not have a complete grid system of streets. The intersection of Connecticut Avenue and Upton Street is an unsignalized location. The Board credits DPW's testimony that traffic congestion on Connecticut Avenue results in the diversion of both through traffic and local residential and commercial traffic onto residential streets and into the public alley system. The neighborhood's streets and alleys are not designed to handle this high level of traffic, compounding congestion and traffic safety problems.

11. Surrounding land uses and background traffic patterns add to the traffic congestion problems in the vicinity of Burke School. The high-density housing north of the school, commercial properties on Connecticut Avenue, and other institutional uses in the neighborhood all contribute to the existing traffic congestion.

12. The subject property is located one block south of the Van Ness Metrorail station and adjacent to Connecticut Avenue bus routes.

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[1] In light of its decision to deny the application on other grounds, the Board declines to address the applicant's request under 11 DCMR § 411 for relief from roof structure requirements, and therefore makes no finding with respect to whether air conditioners or other mechanical equipment in the proposed expansion would become objectionable to adjoining or nearby property.

13. The proposed expansion of private school use would serve the entire metropolitan area. Approximately half of Burke School's current students come from the District of Columbia, and approximately half of those students use public transportation. An additional number of District of Columbia students live within walking distance of the school. A small percentage of students drive themselves to school; the remainder arrive by vehicle. Approximately one-third of the staff uses public transportation; the remainder drive and park at the school.

14. Burke School employs off-duty police officers to direct traffic flow during the peak morning and afternoon periods when most students are dropped off or picked up from school; that is, from 7:30 to 8:30 a.m. and from 3:00 to 7:00 p.m. Most morning drop-offs occur between 7:45 and 8:15 a.m., while most afternoon pick-ups occur between 2:45 and 3:45 p.m.

15. The Board credits DPW's testimony that the existing Burke School currently generates traffic congestion and presents traffic safety problems when students are being dropped off and picked up, as well as during some evening events at the school, and that the expansion of Burke School would increase those traffic problems. The Board also credits the ANC report, which described heavy traffic and parking demands in a densely populated residential neighborhood that contains several institutions, as well as the testimony of the NULS traffic expert, who stated that existing conditions in the area are congested, that unsafe traffic conditions exists at Connecticut Avenue and Upton Streets, and that any additional traffic on streets and alleys around Burke School would exacerbate the existing traffic problems.

16. The applicant's traffic impact analysis indicated that the proposed expansion, with the associated increases in student and staff populations, would result in 29 additional trips to and from Burke School in the morning peak period and 18 additional trips in the afternoon peak hour.

17. The applicant proposed a traffic management plan to lessen traffic impacts of the private school use of the property, with mitigation measures such as transit subsidies for students and employees, efforts to facilitate carpool operations, and a shuttle van service that would bring students from two locations to Burke School on school day mornings, thereby eliminating trips by parents who would otherwise drive their children to school. The applicant also proposed an operations plan and a compliance plan intended to ensure that Burke School would remain in compliance with zoning requirements and conditions of approval of the application.

18. The Board credits the testimony of DPW that implementation of the proposed traffic management plan would improve traffic congestion and safety over existing conditions, but that the proposed increases in student and faculty populations – even with the traffic management plan – would cause increased traffic congestion in the vicinity of Burke School.

Number of Students

19. Burke School currently has 299 students in grades six through twelve, and employs 59 faculty and staff. The applicant proposed to increase student enrollment to 360 (240 high school students and 120 middle school students), with a total staff of 70 teachers and employees.[2]

Parking

20. Burke School currently provides 24 parking spaces on-site. A garage underneath the proposed expansion would add 51 more parking spaces, for a total of 75 spaces.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2) (2001)), to grant special exceptions as provided in the Zoning Regulations. The applicant applied under 11 DCMR § 3104.1 for a special exception pursuant to 11 DCMR § 206 to allow the use of the subject premises as a private school. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

To meet their burden of proof under Subsection 3104.1, the applicant must demonstrate that the proposed private school use is in harmony with the general purpose and intent of the Zoning Regulations and Maps, that it will not adversely affect the use of the neighboring property in accordance with the Zoning Regulations and Maps, and that it meets the special conditions listed in Subsection 206 for private schools. Under Subsection 206.2, "The private school shall be located so that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic, number of students, or otherwise objectionable conditions." Under Subsection 206.3, "Ample parking space, but not less than that required in chapter 21 of this title, shall be provided to accommodate the students, teachers, and visitors likely to come to the site by automobile."

The Board's discretion in reviewing a special exception application is limited to a determination of whether an applicant has complied with the requirements of these subsections. If the applicant meets its burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Bd. of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981).

Further, the Board is required under D.C. Code § 1-309.10(d) (2001) to give "great weight" to the affected ANC's recommendation. The Board must "articulate why the particular

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[2] In light of its decision to deny the application on other grounds, the Board declines to address the ANC's concern that an increase in Burke School's authorized student level would create objectionable disruptive activities, and therefore makes no finding with respect to whether the proposed number of students would become objectionable to adjoining or nearby property.

ANC itself, given its vantage point, does – or does not – offer persuasive advice under the circumstances." *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1384 (D.C. 1977). The Board has carefully considered the ANC's report and as discussed below finds the ANC's recommendation pertaining to traffic persuasive.[3]

Based upon the findings of fact and having carefully considered the ANC's recommendations, the Board concludes that the proposed private school use does not meet the requirements of the Zoning Regulations. Specifically, the Board finds that the proposed use will adversely affect adjacent and nearby properties in the following respects.

Objectionable Conditions (11 DCMR § 206.2). The Board concludes under Subsection 206.2 that the proposed private school expansion is likely to become objectionable to adjoining and nearby property because of traffic impacts associated with the proposed increase in the number of students and staff. The Board concludes that the proposed drop-off and pick-up operations would result in serious pedestrian and traffic safety hazards that cannot be effectively managed. They include lack of sufficient space to safely drop off and pick up students, and safety hazards related to the traffic back-ups that would occur as drivers waited to drop off and pick up students and then re-entered or continued on in the traffic lane. These conditions would also result in traffic congestion, and would compound existing traffic problems associated with the presence of numerous institutional uses in the residential neighborhood and the diversion of traffic onto residential streets and public alleys not designed to accommodate heavy traffic.

Given the likely traffic impacts, the Board concludes that the proposed increased number of students and staff coming to the expanded Burke School is objectionable. The Board finds the ANC's report as to these conditions persuasive, and concludes under 11 DCMR § 206.2 that the traffic conditions associated with the proposed private school use provide a sufficient basis upon which to deny the application.

The Board is not persuaded that the applicant's proposed transportation management, operations, and compliance plans would effectively eliminate the hazards and other objectionable conditions associated with additional school-generated traffic that would result from the requested increases in student and staff populations. Traffic is already extremely difficult in the vicinity of Burke School in light of such factors as the volume of traffic on Connecticut Avenue, the lack of a complete grid system of streets, the narrow residential streets, the extensive use of public alleys in the area, and the prevalence of institutional uses that also generate traffic in the neighborhood. An increase in student and staff populations would likely bring a significant number of additional vehicles to Burke School, notwithstanding its proximity to public transportation, thereby unacceptably exacerbating the already congested morning and afternoon peak periods.

Nor is the Board persuaded to adopt DPW's recommendation of a one-year trial demonstration of the proposed mitigation measures. A temporary demonstration, without construction of the proposed expansion, would not accurately reflect the effectiveness of the

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[3] In light of its conclusion that approval of this application would create objectionable conditions that cannot be mitigated by means of conditions of approval, the Board declines to address the ANC's concern regarding Burke School's failure to comply with conditions of prior Board orders.

proposed mitigation measures, because several of the purported improvements to traffic circulation, such as the on-site queuing, additional parking spaces, and on-site loading facilities, would not be in place until after construction of the proposed expansion.

The "Ample Parking" Requirement (11 DCMR § 206.3). The applicable schedule of parking spaces in 11 DCMR § 2101.1 requires the proposed expanded private school use to provide two parking spaces for each three teachers and other employees, plus the greater of one space for each 20 classroom seats or one space for each 10 seats in the largest auditorium, gymnasium, or area usable for public assembly. With the proposed addition, Burke School would have 70 employees, requiring 47 parking spaces. The requirement of one space for each 10 seats in the largest assembly area, the gymnasium in the existing building, necessitates an additional 24 spaces. Therefore, Chapter 21 requires a total of 71 parking spaces for the combined existing and proposed additional private school use.

The proposed private school must provide sufficient parking to comply with other provisions of the Zoning Regulations. Subsection 206.3 requires that the proposed private school provide "ample parking" to accommodate the students, teachers, and visitors likely to come to the site by automobile, while Subsection 3104.1 requires that the proposed special exception not adversely affect the use of neighboring property. The Board concludes that the proposed parking arrangements provide a sufficient number of parking spaces to accommodate the students, teachers, staff, parents, visitors, and guests likely to come to the school by vehicle. In concluding that the proposed expansion would satisfy the "ample parking" requirement of Subsection 206.3, the Board credits DPW's conclusion that the proposed parking facilities comply with zoning requirements, as well as the Office of Planning's conclusion that the number of additional parking spaces proposed as part of the new addition would be sufficient to mitigate any adverse parking impacts resulting from the proposed increases in student enrollment and staff population.

General Requirements for Special Exceptions (11 DCMR § 3104.1). Subsection 3104.1 requires first that the proposed special exception be in harmony with the Zoning Regulations and Map. The site of the proposed Burke School expansion is located in an R-5-D zone district. Under 11 DCMR § 350, an R-5 district permits the construction of those institutional and semi-public buildings that would be compatible with adjoining residential uses and which are excluded from the more restrictive Residence districts. The Board concludes that but for the objectionable conditions related to traffic and number of students discussed in this decision, the use of the subject property for a private school would be in harmony with the Zoning Regulations and Map.

Finally, the Board concludes that the applicant fails to meet the second requirement of Subsection 3104.1 that the proposed special exception not adversely affect the use of neighboring properties. As discussed above with respect to the requirements of Section 206 for private school use, the Board concludes that the proposed private school expansion would result in an increase in traffic congestion and serious pedestrian and traffic safety hazards. These impacts would adversely affect the use of neighboring property and require denial of the application.

In light of the Board's conclusion that the proposed private school use fails to satisfy the requirements of Section 206, there is no need to consider the applicant's request pursuant to Section 411 for relief from roof structure requirements.

For the reasons stated above, the Board concludes that the applicant has not met its burden of proof. It is hereby **ORDERED** that the application is **DENIED.**

VOTE: 4-0-1 (Sheila Cross Reid, Anne M. Renshaw, Geoffrey Griffis, and Anthony J. Hood voting to deny the application; David Levy not voting, not present.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this Decision and Order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: FEB - 8 2002

UNDER 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBSECTION 3125.6 OF THE DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT RULES OF PRACTICE AND PROCEDURE UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES.

MN/BAB

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16611

As Director of the Office of Zoning, I hereby certify and attest that on FEB - 8 2002 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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